

STATE OF MICHIGAN
COURT OF APPEALS

TALISHA R. REID,

Plaintiff-Appellee,

v

JUDITH D. THOMAS,

Defendant-Appellant,

and

TAMARA NANCE and JERLENE M.
THOMPSON,

Defendants.

UNPUBLISHED
February 12, 2009

No. 280920
Oakland Circuit Court
LC No. 2006-074992-CZ

Before: Saad, C.J., and Davis and Servitto, JJ.

PER CURIAM.

Defendant¹ appeals by right from the bench trial judgment in favor of plaintiff in this real property action. We affirm.

I. Background

This case involves a title dispute over a single-family residence in Pontiac, Michigan. In April 2003, plaintiff moved into the residence with her daughter. Instead of entering into a traditional lease, she signed a purchase option agreement with the owner of the property, Jerlene Thompson. Under the terms of the Option to Purchase, plaintiff agreed to pay Thompson \$675 each month. Once plaintiff paid \$30,000, Thompson promised to transfer the deed to plaintiff. The parties agreed that Thompson would apply 100 percent of plaintiff's payments toward the

¹ Of the three named defendants, only Judith D. Thomas appealed the bench trial judgment. Therefore, this Court refers to Thomas individually as defendant.

purchase price. Plaintiff never recorded her interest in the house, but she made uninterrupted payments to Thompson until March 15, 2006.

Although Thompson testified that she never sold the property, defendant claimed that she purchased the house from defendant for \$30,000 on January 5, 2004. Defendant did not request a receipt for her purchase. She claimed to have purchased the house with cash and intended for the deed to be in the name of her niece, Tamara Nance, to help her build credit. Also on January 5, 2004, Thompson executed the first of three quitclaim deeds on the property, altering her sole interest in the property to a joint interest between Thompson and Nance. Thompson explained that she did so because of her health problems and with the expectation that Nance would sign over the deed to plaintiff if Thompson died before plaintiff paid in full. Nance admitted that she did not witness defendant purchase the house, but asserted that defendant placed Nance's name on the deed to help her credit.

On April 16, 2004, a second quitclaim deed, conveying sole interest in the property to Nance, was executed. Thompson testified that she knew nothing about this second deed and that someone forged her signature. In contrast, Nance testified that Thompson had knowledge of the second quitclaim deed because both Nance and defendant witnessed Thompson sign it.

On March 13, 2006, defendant visited the house, claimed to have title to the home and demanded that plaintiff cease paying rent to Thompson and begin paying rent to her. Both Thompson and Nance told plaintiff that defendant lied about having title and to continue making payments to Thompson, as was her usual practice. On March 17, 2006, a third quitclaim deed granting full title to defendant was recorded. Defendant returned to the home on the same date with a deed purporting to transfer the property to her. Plaintiff contacted Thompson, who arrived at plaintiff's house and asked to examine the deed. Defendant refused to let Thompson examine it and left the house.

Soon thereafter, defendant filed an eviction action against plaintiff for nonpayment of rent. The 50th District Court enforced the third quitclaim deed and granted defendant's request to evict plaintiff. Because of those proceedings, plaintiff filed the present complaint, seeking an injunction to halt eviction proceedings against her and for the trial court to determine the rights that the various parties had in the property. After a bench trial, the trial court ruled in favor of plaintiff. Of the interested parties, the trial court considered only plaintiff's testimony to be 100 percent credible. The trial court also found that both Nance and defendant had actual notice of plaintiff's interest in the property. Thus, as a matter of law, neither Nance nor defendant qualified as a bona fide purchaser.

On appeal, defendant raises three arguments. First, she argues that the trial court improperly determined that Nance was not a bona fide purchaser, as the evidence indicated that Thompson intended to transfer ownership to Nance, regardless of plaintiff's tenancy. Second, defendant similarly argues that the trial court erred when it found that defendant herself had actual notice of plaintiff's interest and that she too, was not a bona fide purchaser. Third, defendant contends that plaintiff's option to purchase the property was insufficient to trigger the notice provisions on which the trial court relied.

II. Nance as Bona Fide Purchaser

We review a trial court's decision in an equitable action to quiet title de novo. *Deutsche Bank Trust Co Americas v Spot Realty, Inc*, 269 Mich App 607, 612; 714 NW2d 409 (2005); *Webb v Smith (After Remand)*, 204 Mich App 564, 568; 516 NW2d 124 (1994). We review findings of fact supporting the decision for clear error. *Id.* "Clear error exists when some evidence supports a finding, but a review of the entire record leaves the reviewing court with the definite and firm conviction that a mistake has been made." *Sinicropi v Mazurek*, 279 Mich App 455, 462; ___ NW2d ___ (2008).

Defendant, citing MCL 565.29,² argues that title vested in Nance because she was a good-faith purchaser without notice of plaintiff's interest. Under MCL 565.29, the holder of a real estate interest who first records generally has priority over subsequent purchasers. *Richards v Tibaldi*, 272 Mich App 522, 539; 726 NW2d 770 (2006). Michigan is a race-notice state, and owners of interests in land can protect their interests by properly recording those interests. *Id.* A bona fide purchaser is a party who acquires a property interest for consideration and without notice of a third party's claimed interest in the property. *Id.*; 1 Cameron, Michigan Real Property Law (3d ed), § 11.20, pp 395-396.

Notice of another party's claim of interest may be either actual or constructive:

When a person has knowledge of such facts as would lead any honest man, using ordinary caution, to make further inquiries concerning the possible rights of another in real estate, and fails to make them, he is chargeable with notice of what such inquiries and the exercise of ordinary caution would have disclosed. [*Richards, supra* at 539, citing *Kastle v Clemons*, 330 Mich 28, 31; 46 NW2d 450 (1951).]

Defendant concedes that, at different times throughout this litigation, Nance has offered contradictory testimony regarding whether she knew of the option. Regardless of Nance's dubious credibility, defendant argues that Nance lacked notice. Defendant's argument, however, contradicts the trial court's factual findings, based upon the evidence set forth in the record.

² MCL 565.29 provides:

Every conveyance of real estate within the state hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded. The fact that such first recorded conveyance is in the form or contains the terms of a deed of quit-claim and release shall not affect the question of good faith of such subsequent purchaser, or be of itself notice to him of any unrecorded conveyance of the same real estate or any part thereof.

Defendant's assertion that "plaintiff never testified that Nance ever spoke to her at all" is false. Plaintiff testified about a conversation that she had with Nance after defendant went to plaintiff's house on March 13, 2006. Soon after defendant left the house, Thompson and plaintiff called Nance from Thompson's cell phone. Plaintiff confirmed that she was speaking to Nance, and Nance told her that defendant "was a liar; and don't believe her because the house is not Judith's; she has not – she does not own the house[.]" Therefore, we find that defendant's claim that plaintiff never spoke to Nance meritless.

The trial court also noted that plaintiff was the only party whose testimony could be believed 100 percent. Because witness credibility issues present a question for the trier of fact, we defer to the trial court in a bench trial regarding credibility given the trial court's special opportunity to personally view and hear witnesses who appear before it. *In re Clark Estate*, 237 Mich App 387, 395-396; 603 NW2d 290 (1999).

Additionally, the trial court found that Nance had actual notice based on its review of the evidence. Defendant contends that this court should disregard two handwritten statements that Nance made indicating actual notice. In light of all of the available evidence, the trial court attached "vital importance" to the two statements. Even though Nance testified under oath that Thompson told her what to write, the trial court recognized that an independent witness contradicted "Ms. Nance's testimony that she was estranged from her family at the time the eviction was taking place[.]" The trial court further stated, "in terms of credibility, she [Nance] has little[.]" As previously discussed, issues of witness credibility present a question for the trier of fact, and this Court defers to the trial court in a bench trial regarding credibility. *In re Clark Estate*, *supra* at 395-396. Therefore, defendant's argument that this Court should reconsider the trial court's credibility determinations based on the evidence is unpersuasive.

Defendant also argues that Nance mortgaging the property to finance her father's bond reflects the actions of someone who "owns a fungible asset – not someone expecting to be on the hook personally for the funds after the discovery of the prioritized interest." On appeal, however, defendant need not prove that Nance acted as if she had title to the house by mortgaging it to finance her father's bond. Instead, defendant must prove that the trial court clearly erred in concluding that Nance had notice of plaintiff's interest in the property. Specifically, defendant must show that Nance did not have "knowledge of such facts as would lead any honest man, using ordinary caution, to make further inquiries concerning the possible rights of another in real estate." *Richards*, *supra* at 539. Thompson asserted that she engaged in discussions with Nance as early as 2003 in which Thompson told Nance that plaintiff "had a lease with option to buy and no one is supposed to get that house but Talisha." The trial court found that Nance "would have known all of the business of Ms. Thompson" and that the first quitclaim deed "was done for the benefit of Ms. Reid." In light of the testimony and the trial court's factual findings, if Nance used "ordinary caution," she would have made "further inquiries concerning the possible rights" of plaintiff. *Id.* at 539. Because she failed to do so, Nance "is chargeable with notice of what such inquiries and the exercise of ordinary caution would have disclosed." *Id.*

Defendant further makes perfunctory mention of constructive notice, even though the trial court based its decision on actual notice. Defendant fails, however, to support her argument with citations to appropriate authority. A party's argument must be supported by citation of appropriate authority. MCR 7.212(C)(7); *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 626;

750 NW2d 228 (2008). Therefore, we conclude that defendant's failure to properly address the merits of her assertion constitutes abandonment of the issue. *Id.* at 626-627.

This Court's review of the entire record does not leave us with "the definite and firm conviction that a mistake has been made." *Sinicropi, supra* at 462. Therefore, we find that the trial court did not err in determining that Nance had actual notice of plaintiff's interest in the property.

III. Defendant as Bona Fide Purchaser

The trial court also found that defendant had actual notice of plaintiff's option to buy the property. We do not find that the trial court clearly erred in such factual finding.

Although defendant took some actions indicating ownership of the property at issue, she failed to exercise due diligence regarding her duty to investigate title. A purchaser of real estate has a duty to investigate the seller's title.

It is the duty of a purchaser of real estate to investigate the title of his vendor, and to take notice of any adverse rights or equities of third persons which he has the means of discovering, and as to which he is put on inquiry. If he makes all the inquiry which due diligence requires, and still fails to discover the outstanding right, he is excused, but, if he fails to use due diligence, he is chargeable, as a matter of law, with notice of the facts which the inquiry would have disclosed. [*American Fed S & L Ass'n v Orenstein*, 81 Mich App 249, 252; 265 NW2d 111 (1978), quoting *Schweiss v Woodruff*, 73 Mich 473, 477-478; 41 NW 511 (1889).]

According to plaintiff she advised defendant shortly after she moved into the home that she had an option to purchase the property. Again, notably, plaintiff is the only witness the trial court found to be entirely credible. In the trial court's view, defendant had actual notice of plaintiff's option to purchase the house in November of 2003, and therefore, any subsequent actions on defendant's part tending to indicate her alleged ownership of the house, have little weight because defendant previously received notice of plaintiff's interest.

Even if defendant had never spoken with plaintiff in November of 2003, had defendant made "all the inquiry that due diligence requires," she would have been put on inquiry of plaintiff's option to purchase the house. *American Fed S & L Ass'n, supra* at 252. Defendant claimed that she purchased the property without ever going inside the house, having the property inspected, or having any idea about the condition of the house but admits that she knew, at the very least, that plaintiff was renting the home. One visit to the home and one conversation with the person currently occupying the home, i.e. the use of "ordinary caution," would have led to further inquiries concerning the possible rights of plaintiff. *Richards, supra* at 539. Because defendant failed to do any of these things, she "is chargeable with notice of what such inquiries and the exercise of ordinary caution would have disclosed." *Id.* Our review of the entire record does not leave this Court with the definite and firm conviction that a mistake has been made on this issue. *Sinicropi, supra* at 462.

Finally, defendant contends that plaintiff's option to purchase the property was insufficient to trigger Michigan's notice provisions. As noted by defendant, however, this issue was not raised before the trial court, and is thus not preserved for appellate review. Under our jurisprudence, a litigant must preserve an issue for appellate review by raising it in the trial court. *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). Although this Court may review an issue not raised in the trial court to prevent a miscarriage of justice, generally a "failure to timely raise an issue waives review of that issue on appeal." *Id.* Because defendant failed to bring this issue before the trial court, she has waived review of the same and we decline to consider it here.

Affirmed.

/s/ Henry William Saad
/s/ Alton T. Davis
/s/ Deborah A. Servitto